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VIA MESSENGER

Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.,
Washington, D.C. 20554


Re: RM-7990

Dear Ms. Searcy:

Enclosed for filing in the captioned docket please find an original and five (5) copies of the Comments of VoiceLink, Inc. Also enclosed is an additional copy which we ask that you file-stamp to indicate receipt and return to the messenger for delivery to the undersigned.

Thank you for your assistance. Please contact me at (202) 955-6300 if you have any questions regarding the foregoing.

Sincerely,


Glenn B. Manishin

GBM:me
Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUL - 7 1992

Federal Communications Commission
Office of the Secretary

In the Matter of:)
)
Petition for Clarification and Modification) RM-7990
of Pay-Per-Call Rules Filed by the National)
Association of Attorneys General)

COMMENTS OF VOICELINK, INC.

VoiceLink, Inc. ("VoiceLink"), by its attorneys, hereby submits these comments on the Petition for Clarification and Modification filed by the National Association of Attorneys General ("NAAG") regarding the Commission's pay-per-call rules.¹

SUMMARY

VoiceLink, an established provider of interstate pay-per-call and other communications services, agrees with NAAG that the pay-per-call ("PPC") rules should apply to all PPC services, including those offered via "800" or in-WATS dialing arrangements, and that automatic or "passive" billing for "800" PPC services should be prohibited in order to deter fraud and consumer abuse. However, the Commission should retain flexibility in permissible PPC billing options so as to permit bona fide pay-per-call operators to offer end users the option of charging PPC services to their telephone bills. A requirement that all "800" PPC services be billed to commercial credit cards, as NAAG proposes, is overbroad and unnecessary, since

¹ Petition for Clarification and Modification, RM-7990 (filed April 30, 1992)(the "Petition"). By Public Notice released June 2, 1992 (DA 92-602), the Commission docketed the Petition as RM-7990 rather than as a filing in CC Docket No. 91-65, the Commission's pay-per-call proceeding, and invited public comment by July 8, 1992.

substantial tone generation requirements (for instance, the customer's full billing telephone number or pre-arranged account number or PIN) are more than sufficient to ensure affirmative consumer acceptance of adequately disclosed pay-per-call charges. VoiceLink therefore proposes that the Commission craft special rules for "800" PPC services which permit line-based billing where this sort of affirmative and substantial manifestation of end user assent is first obtained.

DISCUSSION

Fraudulent and abusive behavior by many unscrupulous PPC operators has unfortunately led to a substantial volume of consumer complaints in the past several years. These unethical, and sometimes unlawful, PPC operators have been the major factor motivating both the Commission's October 1991 adoption of PPC rules requiring "preamble" disclosures and other consumer-protection measures by pay-per-call providers² as well as criminal prosecutions of illegal PPC scams.³ The present NAAG Petition requests that the Commission modify its PPC rules in two principal ways: first, by expressly extending the PPC rules to pay-per-call services offered via in-WATS (or "800") dialing arrangements; and second, by prohibiting any form of automatic number identification ("ANI"), billing detail or tone-generation based billing for "800" PPC services.

The NAAG petition thus proposes limitations on pay-per-call services that affect both the integrity of the PPC business and the ability of PPC providers to

² Policies and Rules Concerning Interstate 900 Telecommunications Services, CC Docket No. 91-65, 6 FCC Rcd. 6166 (1991) ("Pay-Per-Call Order").

³ The Petition recounts a number of fraudulent enterprises and attaches examples of criminal actions initiated by same NAAG members against unlawful PPC operators.

design and offer new services. VoiceLink is an established provider of interstate pay-per-call and other communications services. As a bona fide PPC operator, VoiceLink has absolutely no dispute with—and supports—Commission action to restrict wrongful and unlawful actions by unscrupulous PPC operators, which give the entire industry an undeserved “black eye.” Billing an end user for information charges without notice and disclosure of rates or without the informed consent of the consumer is improper and inexcusable. Therefore, legitimate PPC providers such as VoiceLink have no problem with application of the PPC rules to “800”-based pay-per-call services and with a prohibition of end user billing based on “automatic” billing methods such as ANI capture or billing detail recording for “800” PPC calls. These central elements of the NAAG petition are plainly in the public interest.

NAAG’s proposal that all PPC services provided via in-WATS be billed solely by credit card,⁴ however, is an unnecessary intrusion into legitimate business and consumer flexibility that is far broader than required to deter potentially abusive or fraudulent PPC activities.⁵ The principle that PPC services should not allow charging of end users without clear, affirmative acceptance of conspicuously disclosed rates is self-apparent. To implement that principle, however, the Commission must craft a rule to protect consumers from overreaching PPC operators without unnecessarily hindering business and consumer options in the rapidly changing pay-per-call marketplace. The FCC should not adopt a paternalistic

⁴ Petition ¶¶ 13-14.

⁵ VoiceLink does not now provide pay-per-call services using “800” access, but is concerned that accepting the broad scope of the NAAG proposal would prevent legitimate efforts to develop new and innovative PPC services which do not fall neatly into already defined industry or regulatory usage.

scheme for regulation which precludes legitimate PPC services or simply mirrors state fraud and criminal misrepresentation laws, such as those NAAG members have used to prosecute some PPC scams.

VoiceLink therefore proposes that, in connection with the second area for relief requested in the Petition—permissible PPC billing arrangements for “800” pay-per-call services—the Commission adopt a modified form of the NAAG proposal. The PPC rules should be clarified to require that, where PPC services are provided via “800” dialing arrangements, charges are only authorized where the PPC operator obtains the affirmative consent of the end user following a contemporaneous preamble expressly disclosing the charges. To ensure consumer protection against inadvertent authorization, consent by means merely of passive ANI capture or billing detail recording—or other forms of “automatic” approval—would be prohibited, while consent secured by means of tone generation would be required to include at least a complete billing telephone number or a pre-arranged account number or PIN.⁶ Substantial tone generation consent requirements such as these would preclude potential abuse without unnecessarily limiting consumers from choosing the convenience of line-billing as an option for pay-per-call services.

⁶ Obviously, if the information provider offers a “live” programming service (as opposed to a taped program with automated preamble), then obtaining the express, oral consent of the end user prior to charging would be sufficient. See 47 C.F.R. § 64.715 (end user must “take affirmative action clearly indicating that it accepts the charges” for collect pay-per-call services). Thus, PPC providers should not be required to utilize tone generation as the exclusive method of customer authorization.

A. "800" Pay-Per-Call Services

NAAG's first request is that the Commission clarify that its existing pay-per-call rules to cover PPC services provided by means of "standard inward WATS (800 Number) services."⁷ There can be little dispute that such "800" PPC services are (and should be) covered by the Commission's October 1991 PPC regulations. Section 64.708 of the Rules, 47 C.F.R. § 64.708, broadly covers all pay-per-call services generically, without limitation to certain types of access or dialing arrangements. No change in the rules appears necessary, therefore. Providers of "800" PPC services should already be making the same disclosures and providing the same opportunity for disconnection which "900" and other PPC services are required to offer. VoiceLink submits that the only PPC operators who would object to application of the so-called "900" PPC rules to "800" PPC services are those illegitimate operators whose objective is not to provide communications services but rather to defraud or mislead consumers.

B. Billing for "800" PPC Services

NAAG's second proposal is that the Commission decree a total ban on all line-billing for "800" PPC services. See Petition ¶¶ 13-14. In essence, NAAG proposes that all billing based on ANI, billing detail recording or tone generation be precluded, and that all "800" PPC services be limited to billing by MasterCard, VISA and other commercial credit card. Id. In support, NAAG argues that billing consumers for PPC services on their telephone bill is "inherently misleading"

⁷ Petition at 1 and ¶ 9.

because end users will always be confused by the "toll free" nature of an "800" access method. Id.⁸

NAAG is correct that consumers should not be tricked or misled into agreeing to PPC charges. NAAG is incorrect, however, in rejecting the basis of the Commission's October 1991 Pay-Per-Call Order—that information services are misleading only where disclosures are inadequate or inconspicuous. As the Petition dramatically points out, existing state laws already proscribe fraudulent or deceptive abuse of the "free" nature of "800" service; in the Tennessee lawsuit included as an exhibit to the Petition, for example, the PPC providers are charged under existing statutes with billing consumers for "800" calls without notice or consent.⁹ There is no need for the FCC to preclude all line-based PPC billing simply because some unscrupulous operators may have defrauded consumers where traditional fraud remedies are working and effective.

The NAAG proposal to preclude all "800" PPC services except for credit card billing is also inconsistent with this Commission's policy. The Commission's Communications Act mandate is to assure just and reasonable practices, not to force all PPC operations, or any other communications service, to use specific forms of billing. The Commission has always acted on the assumption that consumers can

⁸ Many existing communications services already employ "800" access for chargeable services. For instance, under the Commission's Orders in Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, 6 FCC Rcd. 4736 (1991), most providers of operator services (including AT&T, MCI and US Sprint) have established "800" access code numbers for use in making calling card calls. Consumers have not only had little difficulty understanding that they will be charged for such calls despite the "toll free" nature of "800" access, but the Commission expressed absolutely no concern for potential confusion in directing all OSPs to establish an "800" or "950" access number.

⁹ See Petition, Attachment A, ¶¶ 17-20.

and will be protected where provided with “[the] essential information which they need to make an informed purchase decision,”¹⁰ rather than NAAG’s assumption that consumers will “inherently” ignore disclosures or fail to understand them in agreeing to PPC charges. The NAAG proposal is therefore not only paternalistic, but inconsistent with the effective functioning the communications marketplace, since it would preclude fairly disclosed billing arrangements that many consumers find more convenient or more desirable than commercial credit cards.

There can be little dispute that abuse is possible in “800” pay-per-call services. For instance, “passive” billing by ANI capture—e.g., where consumers may be billed PPC charges merely for staying on the line after a certain point in the information service program—is almost certainly misleading. The problem with these services, however, is not the mere use of “800” access; it is that the PPC operator has not secured clear, affirmative end user agreement to the PPC charges. Thus, automatic ANI or billing detail billing for “800” PPC could be prohibited without unnecessarily infringing on market flexibility or consumer convenience. On the other hand, where affirmative and substantial manifestation of consumer consent is obtained, “800” pay-per-call services should be allowed to bill charges to a telephone line on the same basis as other PPC services. See 47 C.F.R. § 64.715 (collect charges permissible where party “has taken affirmative action clearly indicating that it accepts the charges” for pay-per-call services).

PPC businesses should be permitted to retain the ability to offer consumers the option of selecting line-based billing for their desired audio programming

¹⁰ Pay-Per-Call Order, 6 FCC Rcd. at 6167, ¶ 7.

purchases. Accordingly, tone generation billing should not be banned outright. Rather, the Commission should modify the NAAG proposal to outlaw "skimpy" or subtle forms of consent obtained by tone generation, which may be too susceptible to abuse and inconsistent with the "affirmative consent" principle embodied in Section 64.715 of the Rules. For example, the Commission may conclude that the sort of "touch 1 to continue this call" options involved in the NAAG criminal prosecutions are too ambiguous. VoiceLink agrees that the PPC rules should not allow pay-per-call operators to charge end users without substantial and unambiguous indication of consent.

Consistent with these principles, VoiceLink proposes that the Commission couple minimum authorization standards for tone generation based billing with special preamble requirements for "800" PPC services. First, the preamble specified in Section 64.711 should be provided (or repeated, if necessary) immediately before end user billing authorization is requested.¹¹ Second, tone-generation authorization should require that the end user input the complete 10-digit billing telephone number or a pre-arranged account number or PIN with the information

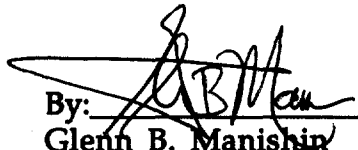
¹¹ Section 64.711 appears to have been drafted principally for PPC services, such as "900" services, for which charging commences automatically or upon connection. See 47 C.F.R. §§ 64.711 (a), (c). Since the "pay" portion of "800" pay-per-call services may be separate from the toll-free portions, the regulations may need to be modified slightly to allow for a preamble either at the commencement of the entire program, or immediately prior to the beginning of the pay portion, or both. For example, if the initial "800" PPC preamble discloses that the call is free unless the consumer chooses additional "pay" options later in the program, the cost and nature of each "pay" option might be disclosed in detail only if the consumer navigated through a voice-prompt menu to the "pay" portion of the service, at which point a preamble would advise of the mechanism for indicating consent to PPC charges. If the Rules were revised to provide in Section 64.711(a) that "[c]hargeable programs must be preceded immediately by" a preamble, the Rules would be appropriate for both "800" and "900" pay-per-call.

provider.¹² With these restrictions, end users will be protected against uninformed or inadvertent consent to PPC charges on "800"-based services, while still offering consumers the ability to charge PPC services to their telephone bills or other accounts by pressing the buttons on their telephone instrument. Properly implemented, VoiceLink believes that legitimate PPC services using "800" access can offer desired billing flexibility while still maintaining specific minimum standards for consent which avoid unscrupulous or fraudulent PPC operations.

CONCLUSION

The NAAG petition should be granted, in part, in order to deter unscrupulous and unlawful PPC operations. Pay-per-call services need not be prohibited from using inward-WATS access, although the Commission should couple minimum authorization standards for tone generation based billing with special preamble requirements for "800" PPC services.

Respectfully submitted,


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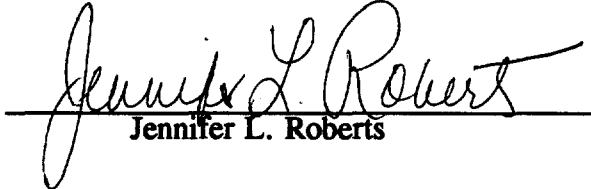
Attorney for VoiceLink, Inc.

Dated: July 7, 1992.

¹² For example, following the specific "pay" service preamble, the consumer could be informed: "Using your touch tone phone, please input your full telephone number, including area code, to receive these services, which will be charged to your telephone bill."

CERTIFICATE OF SERVICE

I, Jennifer L. Roberts, hereby certify on this 7th day of July, 1992, that I have served a copy of the foregoing **COMMENTS OF VOICELINK, INC.** via first-class mail, postage prepaid or via hand delivery to the persons listed below.


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